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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,277	08/01/2001	Richard Cerami	020366-077520US	5363

20350 7590 11/28/2005

TOWNSEND AND TOWNSEND AND CREW, LLP  
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SAN FRANCISCO, CA 94111-3834

EXAMINER
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BUI, KIEU OANH T

ART UNIT	PAPER NUMBER
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2611

DATE MAILED: 11/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/921,277	<b>Applicant(s)</b> CERAMI ET AL.	
	<b>Examiner</b> KIEU-OANH T. BUI	<b>Art Unit</b> 2611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

**DETAILED ACTION*****Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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2. Claims 1-24 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-30 of U.S. Patent No. 6,901,530 B2 (the Patent). Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons.

For claim 1, this application claim is obvious in view of the patent claim 1 and 5 as the Patent teaches the fault of the video system as claimed in claim 1 can be isolated by a root cause analysis of claim 5; and in view of the combination of claims 27 and 28. Therefore, it would have been obvious to modify the root cause analysis as the main feature for the detection of fault within the video and data network.

For claim 2, this feature is called for in the Patent claim 2.

For claim 3, this feature is called for in the Patent claim 3.

For claim 4, this feature is called for in the Patent claim 11.

For claim 5, this feature is called for in the Patent claims 1 and 4.

For claim 6, this feature is called for in the Patent claim 1 and 29 because the device can be physical or logical for interfacing to virtual network elements.

For claim 7, this feature is called for in the Patent claim 1, 4 and 29 (see claims 5 & 6).

For claim 8, this feature is called for in the Patent claim 1 since the correlated network correlation data is the collection of performance data from either physical connectivity data or virtual connectivity data.

For claims 9 and 10, this feature is called for in the Patent claim 1 for the test of video and data on the network and includes a physical connectivity test.

For claim 11, this feature is called for in the Patent claim 6.

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For claim 12, this feature is called for in the Patent claim 1 for the test in the network includes a virtual connectivity test.

For claim 13, this feature is called for in the Patent claim 8.

For claims 14-24, these features are suggested in the Patent claims 27-30, as the root cause is identified and resolved based on predetermined resolution, including re-routing the customers affected by the fault. Therefore, it would have been obvious to realize that in addition to re-routing the affected customers, the system further can notify the affected customers the root cause ahead of time, move them to the unaffected areas (or devices), and notify them again if the process is done or fixed, whether a physical connectivity test or a virtual connectivity test provided also with a history log.

### ***Conclusion***

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Bowman-Amuah (US Pat. No. 6,426,948 B1) discloses a video conferencing fault management in a hybrid network.

Dempski et al. (US Pat. No. 6,727,927 B1) disclose a method, system and article of manufacture for a user interface for a knowledge management tool.

Liongosari et al. (US Pat. No. 6,900,807 B1) disclose a system for generating charts in a knowledge management tool.

Cerami et al. (US 2005/0183129 A1) disclose a proactive repair process in the XDSL network (with a VDSL focus).

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4. **Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**or faxed to PTO New Central Fax number:**

(571) 273-8300, (for Technology Center 2600 only)

*Hand deliveries must be made to Customer Service Window,  
Randolph Building, 401 Dulany Street, Alexandria, VA 22314.*

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to "Krista" Kieu-Oanh Bui whose telephone number is (571) 272-7291. The examiner can normally be reached on Monday-Friday from 9:30 AM to 7:00 PM, with alternate Fridays off.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kieu-Oanh Bui  
Primary Examiner  
Art Unit 2611

KB

Nov. 17, 2005